

	Montana Operations Manual <i>Policy</i>	Policy Number	03-0317
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Issuing Authority	Department of Administration, State Human Resources Division		
Maternity and Parental Leave Policy			

I. Purpose

This policy establishes uniform procedures for managing maternity and parental leave in Montana state government. This policy also outlines prohibited employment practices in relation to maternity leave.

II. Scope

Parental leave covers Montana's executive branch employees, except those employed by the Montana State Fund, the Montana university system, student interns, short-term workers, elected officials, the personal appointed staff of elected officials, and other employees exempt from policy under 2-18-103, 2-18-104, and 2-18-601(6), MCA.

Maternity leave must be extended to all female employees meeting the definition of employee as defined in 49-2-101, MCA.

If these policy provisions conflict with specific collective bargaining agreements, the collective bargaining agreements take precedence to the extent they are applicable.

III. Procedures

Maternity leave is an unpaid leave of absence available to female employees for temporary disability because of pregnancy and delivery.

Parental leave is an unpaid leave of absence not to exceed 15 working days available to birth fathers or permanent employees who are adopting a child.

Eligible employees taking maternity or parental leave concurrently with Family and Medical Leave (FMLA) must follow the FMLA Policy (MOM 03-0309) requirements. The FMLA Policy takes precedence over this policy.

A. Requesting Leave

1. Employees must request maternity or parental leave according to the procedures established by their agency. Employees should give at least a

30-day advance oral or written notice of the need to take leave or as soon as practical when advance notice is not possible.

2. Agency management may establish procedures for the request and approval of leave in compliance with this policy. The leave request should include the anticipated length absence and any accrued paid leave the employee intends to use while on maternity or parental leave.

B. Maternity Leave Use

1. Montana law requires female employees receive a reasonable leave of absence for maternity leave (49-2-310, MCA). "Reasonable" is determined case-by-case and is based upon the employee's ability to perform her job. In the case of normal pregnancy and delivery, agency management must grant a minimum of six calendar weeks after the birth of a child as a reasonable period for recovery.
2. Leave may be longer if the employee is unable to perform her job prior to delivery or if there are complications like illness or surgical delivery. If the agency and the employee cannot agree on a reasonable period for maternity leave, agency management should rely on the judgment of the employee's medical provider.
3. An employee shall not be required to obtain medical certification of a temporary disability for the initial six calendar-weeks of leave following the birth of a child. However, agency management may require the employee to provide medical certification to extend the maternity leave beyond the minimum six-calendar-week period. The certification should state that the employee is unable to perform her employment duties and give the estimated duration of the extended leave.
4. The employee is responsible for providing timely, complete, and sufficient medical certification. Employees must provide the certification within 15 calendar days after the agency's request unless it is not practicable to do so despite an employee's diligent, good faith efforts.
5. Agency managers should not ask employees probing questions regarding their medical condition that may elicit genetic information about an employee or an employee's family members. See the Non-Discrimination EEO Policy (2.21.4001 et seq., ARM) and the Sick Leave Policy (MOM 3-0310) for further guidance.
6. Nothing in this policy prohibits an employee from voluntarily returning to work sooner than six calendar weeks after the birth of a child.

C. Parental Leave Use

1. Parental leave is available to birth fathers immediately following a child's birth or to permanent employees who are adopting a child (2-18-606, MCA).
2. Agency management must approve a reasonable leave of absence not to exceed 15 working days for parental leave immediately following the birth of a child or placement of a child with the employee for adoption.
3. Agency management may approve less than 15 working days if they determine the length of leave requested is unreasonable. Agency management must provide the employee a written response explaining why the request is unreasonable. The written notice must also include the length of leave considered reasonable and approved.
4. An agency may require documentation for the use of parental leave. For example, a birth father may need to provide a birth certificate or another document indentifying the birth father. Documentation from an adoptive parent may include, but is not limited to, an affidavit of intent to adopt or another agreement indicating a child's placement for adoption.

D. Accrued Paid Leave Use

1. Both maternity and parental leaves are unpaid. However, employees may use accrued paid leave concurrently with maternity or parental leave. Employees must request the use of additional leave consistent with state and agency policy applicable to the type of leave requested.
2. Agencies may also require employees to use accrued sick leave, annual leave, compensatory time, or other accrued paid leave concurrently with maternity or parental leave.
3. State law limits the use of sick leave to 15 days for birth fathers and adoptive parents (2-18-606, MCA) unless the absence qualifies for the use of sick leave for another reason.

E. Concurrent FMLA Leave

1. Eligible employees may take up to 12 weeks of FMLA for the birth or adoption of a child. Maternity and parental leave run concurrently with FMLA leave. Agency management should count maternity and parental leave towards an eligible employee's FMLA leave entitlement. Employees may not use maternity or parental leave to extend the length of FMLA leave entitlements.
2. When eligible employees take maternity or parental leave concurrently with FMLA leave, the FMLA policy (MOM 03-0309) requirements take precedence over this policy. Agency management and the employee must

follow all medical certification procedures and timelines required by the FMLA Policy and federal regulations (29 CFR 825).

F. Reinstatement

Employees returning to work at the end of a reasonable leave of absence for maternity or parental leave must be reinstated to their original job or to an equivalent position with equivalent pay and accumulated longevity, retirement, and leave benefits.

G. Payroll Records

1. Agency management must maintain documentation for requests and use of maternity and parental leaves as part of the employee's permanent employment record.
2. The central payroll office in Department of Administration maintains records of employee's leave accrual and usage.

H. Prohibited Acts

1. As provided in 49-2-310, MCA, it is unlawful to:
 - a. terminate employment because of pregnancy;
 - b. refuse to grant the employee a reasonable leave of absence for the pregnancy;
 - c. deny the employee who is disabled as a result of pregnancy any compensation to which the employee is entitled as a result of the accumulation of disability or leave benefits accrued, provided that the employer requires the disability to be verified by medical certification indicating the employee is not able to perform employment duties; or
 - d. require an employee to take a mandatory maternity leave for an unreasonable length of time.

IV. Resources

A. Montana Code Annotated:

1. Parental Leave for State Employees - 2-18-606, MCA.
2. Maternity Leave - Unlawful Acts of Employers - 49-2-310, MCA.
3. Reinstatement to Job Following Pregnancy Related Leave of Absence - 49-2-311, MCA.

B. Federal Regulations:

1. Family Medical Act - 29 CFR 825

C. State Policy

1. Family and Medical Leave Act Policy - MOM #03-0309
2. Sick Leave Policy - MOM - #03-0310
3. Non-Discrimination EEO Policy - 2.21.4001 et seq., ARM
4. Annual Leave Policy – MOM - #03-0305
5. Overtime and Non-Exempt Compensatory Time Policy - MOM - #03-0210
6. Exempt Compensatory Time – MOM - #03-0211

This policy includes all definitions under 2-18-601, MCA. For the purposes of this policy, the following definitions also apply:

Birthfather: The individual identified as the child's father on a certificate issued at birth, on a document used to file for a birth certificate or identified in a manner acceptable to the supervisor approving leave.

Immediately following: The day a child is born or is physically transferred to the custody of the adoptive parent(s).

Placement: The transfer of physical custody of a child for adoption to the person(s) who intends to adopt the child.